Motion denied 15-6 Mot. denied
Ch. Jus. to 15-8 Motion to
write 15-8 dismiss
Submitted
15-6 Feb 24.
15-8 & 195

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~248~~ 120

THE NORWICH AND WORCESTER RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES JOHNSON.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED OCTOBER 14, 1871.

Dec. 3. 1872

SUPREME COURT OF THE UNITED STATES.

No. 346.

THE NORWICH AND WORCESTER RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES JOHNSON.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	4	2
Petition	7	2
Summons	24	8
Answer	26	8
Finding of facts	28	9
Decree	29	9
Motion in error	35	11
Decree of supreme court	39	12
Bond	41	13
Clerk's certificate	44	14
Joinder in error	45	14

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of errors of the State of Connecticut, greeting:

Because, in the record and proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut, in the county of New London, in the third judicial district of said State, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles Johnson, of the town of Norwich, in said county, and the Norwich and Worcester Railroad Company, a corporation under and by virtue of the laws of said State of Connecticut, and having their office and principal place of business in said town of Norwich in said New London County, wherein was drawn in question the construction of certain statutes of the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under said statutes, a manifest error hath happened, to the great damage of the said Norwich and Worcester Railroad Company, as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice
2 done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the twenty-third day of March, in the year of our Lord one thousand eight hundred and seventy-one.

LOREN P. WALDO,
Clerk of the Circuit of the United States
for the District of Connecticut.

Allowed by—

THO'S B. BUTLER,
Chief Judge of the Supreme Court of Errors
of the State of Connecticut.

3 NORWICH AND WORCESTER RAILROAD Company
vs.
CHARLES JOHNSON.

Writ of error filed in the office of the clerk of the supreme court of errors of the State of Connecticut for New London County, in the third judicial district this 25th day of March, A. D. 1871.

W'M L. BREWER,
Clerk of said Court.

4 THE UNITED STATES OF AMERICA, *ss:*

To Charles Johnson, of the town of Norwich, county of New London, and State of Connecticut, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors of the State of Connecticut, within and for New London County, in the third judicial district of said State, wherein the Norwich and Worcester Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas B. Butler, chief judge of the supreme court of errors of the State of Connecticut, this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-one.

THOMAS B. BUTLER,
Chief Judge of the Supreme Court of Errors of the State of Connecticut.

5 On this 25th day of March, in the year of our Lord one thousand eight hundred and seventy-one, personally appeared Nehemiah B. Payne, United States deputy marshal for the district of Connecticut, before me, the subscriber, and makes oath that he delivered a copy of the within citation to Charles Johnson of the town of Norwich, County of New London, and State of Connecticut, (the person therein named,) on the 25th day of March, A. D. 1871.

ABIEL CONVERSE,
U. S. Commissioner.

NORWICH AND WORCESTER RAILROAD CO.
vs.
CHARLES JOHNSON.

Citation in the above-entitled writ of error referred to and filed in the office of the clerk of the supreme court of errors of the State of Connecticut for New London County, in the third judicial district, this 25th day of March, A. D. 1871.

W'M L. BREWER,
Clerk of said Court.

6 NORWICH AND WORCESTER RAILROAD CO., plaintiff in error,
vs.
CHARLES JOHNSON, DEFENDANT IN ERROR.

The answer of Tho's B. Butler, chief judge of the supreme court of errors of the State of Connecticut, to the foregoing writ.

The process and record, whereof mention is therein made, follow in these words, to wit:

7 To the honorable superior court next to be held in New London, in and for the county of New London, on the second Tuesday of September, A. D. 1870:

The petition of Charles Johnson, of the town of Norwich in said county, respectfully represents:

That, on the first day of August, A. D. 1860, the Norwich and Worcester Railroad Company, a corporation under and by virtue of the laws of the State of Connecticut, and having their office and principal place of business in said Norwich, wishing to borrow money under the powers and by virtue of the authority conferred upon railroad companies by the statute of this State, executed to the treasurer of the State its certain mortgage deed in the words and figures following, to wit:

"To all people to whom these presents shall come, greeting:

"Whereas, The Norwich and Worcester Railroad Company, in pursuance of their charter, granted at the May session of the general
8 assembly of the State of Connecticut, A. D. 1832, and the several amendments thereto, passed at subsequent sessions of said general assembly, located, constructed, and completed a railroad from their depot in the city of Worcester, in the Commonwealth of Massachusetts, to their depot at Allyn's Point, in the town of Ledyard, in said State of Connecticut, through the towns of Worcester, Auburn, Oxford, and Webster, in said Commonwealth of Massachusetts, and the towns of Thompson, Putnam, Killingley, Plainfield, Griswold, Lisbon, Norwich, Preston, and Ledyard, in said State of Connecticut, and procured the right of roadway, and such lands as were necessary for railroad purposes between said termini, and built the necessary bridges, masonry, wharves, turnouts, depots, and other necessary structures connected with said roadway, and procured cars, engines, and other equipments required for the operation of said road, and for more than fifteen years last past have operated the same between the termini aforesaid; and
9 whereas, Augustus Brewster, the president, and P. St. M. Andrews, the chief engineer, of said company, have duly certified under their hands, on the first day of August, A. D. 1860, to the comptroller of public accounts of said State of Connecticut, that said company have actually expended in procuring said roadway and lands, and in the construction and completion of said railroad, and the works and equipments thereof, the sum of two millions six hundred and thirteen thousand six hundred and ninety-four dollars and twenty-one cents, to which said certificate, said president and said chief engineer have each made oath in due form of law; and whereas, said company, by a vote of the stockholders of the same, at a meeting of the stockholders, duly called and held at Norwich, in said State of Connecticut, for that purpose, on the tenth day of July, A. D. 1860, decided to issue their bonds, one hundred and seventy-five thereof, for the sum of one thousand dollars each, and fifty thereof for the
10 sum of five hundred dollars each, to the amount of two hundred thousand dollars in the whole, which bonds, in accordance with the provisions of the vote passed by said stockholders, at their said meeting, were to be signed by the president, and countersigned by the treasurer of said company, and payable at the office of the Farmer's Loan and Trust Company, in the city of New York, as follows: Thirty of said bonds, numbering from one to thirty, for the sum of one thousand dollars each, in three years from the first day of August, A. D. 1860; twenty-five thereof, numbering from thirty-one to fifty-five, for the sum of one thousand dollars each, in four years from said first day of August; twenty-five thereof, numbering from fifty-six to eighty, for the sum of one thousand dollars each, in five years from said first day of August; twenty-five thereof, numbering from eighty-one to one hundred and five, for the sum of one thousand each, in six years from said first day of August; fifty thereof, numbering from one hundred

and six to one hundred and fifty-five, for the sum of five hundred dollars each, in seven years from said first day of August; twenty-five thereof, numbering from one hundred and fifty-six to one hundred and eighty, for the sum of one thousand dollars each, in eight years from said first day of August; twenty-five thereof, numbering from one hundred and eighty-one to two hundred and five, for the sum of one thousand dollars each, in nine years from said first day of August, and the remaining twenty thereof, numbering from two hundred and six to two hundred and twenty-five for the sum of one thousand dollars each, in ten years from said first day of August; all of said bonds bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of February and August in each year, at the office of said Farmer's Loan and Trust Company, in said city of New York, with interest warrants or coupons thereto attached, and that the treasurer of said company should prepare and issue the same under the direction of the board of directors, and that said bonds, when prepared and ready for issue should be placed in the hands of Charles Johnson for negotiation, and further, by a like vote, authorized, empowered, and directed their president, Augustus Brewster, to execute in the name and on behalf of said company, under their corporate seal, a mortgage of the railroad, railroad property and franchise of the company, to secure the payment of said bonds authorized to be issued as aforesaid;

"And whereas said company have, in accordance with the terms of said votes, made and executed their two hundred and twenty-five bonds, one hundred and seventy-five thereof for the sum of five hundred dollars each, to the amount of two hundred thousand dollars in the whole, which bonds, in accordance with the provisions of the vote passed by said stockholders, at their said meeting, are signed by the president and countersigned by the treasurer of said company—thirty of said bonds numbering from one to thirty, for the sum of one thousand dollars each, and payable in three years from the first day of August, A. D. 1860; twenty-five thereof numbering from thirty-one to fifty-five for the sum of one thousand dollars each, payable in four years from said first day of August; twenty-five thereof numbering from fifty-six to eighty, for the sum of one thousand dollars each, payable in five years from said first day of August; twenty-five thereof, numbering from eighty-one to one hundred and five for the sum of one thousand dollars each, payable in six years from said first day of August; fifty thereof numbering from one hundred and six to one hundred and fifty-five, for the sum of five hundred dollars each, payable in seven years from said first day of August; twenty-five thereof, numbering from one hundred and fifty-six to one hundred and eighty, for the sum of one thousand dollars each, and payable in eight years from said first day of August; twenty-five thereof, numbering from one hundred and eighty-one to two hundred and five, for the sum of one thousand dollars each, payable in nine years from said first day of August, and the remaining twenty thereof, numbering from two hundred and six to two hundred and twenty-five, for the sum of one thousand dollars each, and payable in ten years from said first day of August; all of said bonds bearing interest at the rate of seven per cent. per annum, with interest warrants or coupons attached, payable semi-annually, on the first days of February and August in each year, and have, in compliance with the laws of the State of Connecticut, been registered in the office of the comptroller of public accounts of said State, a certificate whereof appears on each bond, according to the requirements of said law;

"And whereas the whole amount of bonds outstanding against said company, including the bonds hereinbefore described, does not exceed in amount one-third of the whole amount actually expended by said company on said road and its equipments, as certified to in writing as aforesaid, to the comptroller of public accounts of said State of Connecticut:

"Now, therefore, know ye, that the said Norwich and Worces-
15 ter Railroad Company, as well for and in consideration of the premises, and the trust hereinafter mentioned, and for the better security of the payment of said bonds, as also for and in consideration of one dollar unto said company well and truly paid by Lucius J. Hendee, of Hebron, in said State of Connecticut, in his capacity of treasurer of said State, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, aliened, assigned, transferred and set over, and by these presents do give, grant, bargain, sell, alien, assign, transfer, and set over, unto the said treasurer and his successors in said office, their entire railroad, from their depot in the city of Worcester, in the Commonwealth of Massachusetts, to their depot at Allyn's Point in the town of Ledyard, in the State of Connecticut, together with all the franchises, rights, and powers thereunto appertaining, and to said company belonging, with the road-bed, depots, bridges, wharves, and lands connected with
16 the same, belonging to said company, and between the termini before mentioned; and said grantors do in like manner and for the like consideration, bargain, sell, and convey, and by these presents have bargained, sold, and conveyed to said treasurer and his successors in said office, thirteen eight-wheel locomotives, one six-wheel locomotive, seventeen passenger cars, three baggage cars, one hundred and nine eight-wheel house freight cars, thirty-three four-wheel house freight cars, sixty-nine eight-wheel platform cars, sixty-nine four-wheel coal cars, all of said real and personal property being subject to certain mortgages of prior date hereto, which appear of record, and this conveyance being made subject to all such prior incumbrances, it being however understood that, in case it shall become necessary by the union of any other railroad with said Norwich and Worcester road, or from any other cause it shall be deemed expedient to effect a sale of a portion of the real estate or of the personal estate belonging to said railroad company embraced in
17 this mortgage, or to effect an exchange of any of said land for other land, or of said personal estate for other personal estate, that such sale or exchange may be effected, provided, that the avails of such sales shall be applied to reduce the debts, which are now a lien on said property prior to that created by this mortgage, or, in case of an exchange, the said prior mortgages shall remain a lien on the property so received in exchange:

"To have and to hold the said property, real and personal, hereinbefore granted, assigned, and conveyed to the said treasurer of the State and his successors in office, in trust for the person or persons, bodies politic or corporate, who shall become holders of the said bonds hereinbefore described, or any of them, issued by said grantors, subject to the terms and stipulations of said bonds, and subject to the possession, control, and management of said grantors, so long as they shall well and truly perform all and singular the stipulations of the
18 bonds aforesaid, and all the covenants of this deed, and subject to all such prior mortgages.

"And said company, for themselves and their successors, do hereby covenant with the said treasurer of the State, and his successors in said office, that at and until the ensealing and delivery hereof, they are well

siezed and possessed of the above-granted property, and have full power to grant, assign, and convey the same in manner aforesaid, and that the same is free from all incumbrances, except certain mortgages, which will appear of record. And the said grantors, for themselves and their successors, hereby covenant with the said treasurer, and his successors in said office, to warrant and defend the above-granted and assigned premises from all claims whatever, except said mortgages.

"This conveyance is upon the express limitation that, upon the payment of the principal and the interest as aforesaid, of each and every of said bonds, and the discharge of said company from all lia-
19 bility thereon, the estate and trust herein and hereby created in said treasurer and his successors in said office, shall cease and thenceforth be null and void, and the premises granted and conveyed hereby shall be divested from said grantee, and immediately re-invested, in law and in fact, in said grantors, without any entry or other act or declaration to be by said grantors or said grantee made, done, or performed.

"In testimony whereof the said Norwich and Worcester Railroad Company have caused these presents to be sealed with their corporate seal, and to be signed by their president, he being specially authorized for that purpose, this first day of August, A. D. 1860."

Which deed was duly signed, sealed, acknowledged, and recorded, as by said deed or a duly certified copy thereof, ready in court to be produced, will fully appear.

And your petitioner further avers that the said bonds were of the tenor and purport following, to wit:

"UNITED STATES OF AMERICA.

"No. .] STATE OF CONNECTICUT. [$1,000.

"*Norwich and Worcester Railroad Company.*

20 "Whole amount authorized, $200,000. Interest payabe semi-
"annually.

"On the first day of August, 1870, the Norwich and Worcester Railroad Company promise to pay to Lucius J. Hendee, treasurer of the State of Connecticut, trustee, or bearer, one thousand dollars, at the Farmers' Loan and Trust Company, in the city of New York, with interest at the rate of seven per cent. per annum, payable semi-annually on the presentation of the interest warrants hereunto attached.

"This bond is executed and secured by mortgage, in conformity with the laws of said State, and issued by authority of a resolution of the stockholders of said company at a legal meeting held on the 10th day of July, 1860.

"In witness whereof the Norwich and Worcester Railroad Company have caused this bond to be signed by their president and treasurer, and the seal of the company to be affixed.

"Dated at Norwich, on the first day of August, A. D. 1860."

Which said bonds were all duly signed by the president and
21 treasurer of said company, and the corporation seal affixed thereto, and the certificate of the comptroller of the State appended, as by said bonds, ready in court to be produced, will fully appear. And your petitioner avers that said bonds were issued and sold upon the faith of the mortgage made as aforesaid, and certain collateral security deposited with Jedediah Huntington and Franklin Nichols, as herein-

after specified, and as will appear by the certificate of said trustees upon the back of each of said bonds.

And your petitioner avers that, on the first day of August, 1870, when said bonds named in said deed, numbering from two hundred and six to two hundred and twenty-five, fell due, he was and now is the owner of bonds numbered from two hundred and six to two hundred and twenty-two, inclusive, except bond numbered two hundred and fifteen, being in all, bonds of the amount of sixteen thousand dollars. And afterwards, to wit, on the 9th day of August, 1870, the petitioner became and now is the owner of bond numbered two hundred and fifteen, named in said mortgage, making in all seventeen thousand dollars of
22 indebtedness due from said corporation to your petitioners on account of the principal sum named in said bonds, with seventeen coupons attached to the same, of the amount of thirty-five dollars each.

And your petitioner further avers that, for the farther and better security of said bonds, there was transfer'ed to Jedediah Huntington and Franklin Nichols, of said Norwich, forty shares of the capital stock of the Norwich and New York Transportation Company, a corporation under the laws of the State of Connecticut, and having their office and place of business at said Norwich, to be held by said Huntington and Nichols, in trust for and as collateral security for the payment of the principal and interest of said bonds to the holders thereof, and that your petitioner is informed and believes that the said Huntington and Nichols hold upon the trust aforesaid six hundred and eighty shares of the capital stock of said Norwich and New York Transportation Company of the par value of twenty-five dollars per share.

23 And your petitioner further avers that said Norwich and Worcester Railroad Company did not pay said seventeen bonds when the same fell due, but made default in the payment of said principal and interest according to contract, nor have they since paid the same, but the said bonds and the interest coupons thereof remain wholly due and unpaid, although due presentment of the same was made at the office of the Farmers' Loan and Trust Company, where the said bonds and the coupons thereof were made due and payable.

Wherefore your petitioner prays your honor to take his case into consideration, to inquire into the truth of the foregoing facts, and, on finding them true, to order and decree that said mortgaged property may be placed in the hands of the trustee for the benefit of your petitioner as a creditor of said railroad company in accordance with the statute law of this State; and that your honor would farther order and decree that said six hundred and eighty shares of the capital stock of
24 said Norwich and New York Transportation be sold by said Nichols and Huntington, trustees, and the avails thereof be applied to the payment of said bonds and coupons held by your petitioner, and that said Huntington and Nichols be enjoined under a suitable penalty from transferring said stock or making use of the same until said bonds and coupons be paid, or that your honor would, in some other way, grant such relief as to equity and justice appertain, as your petitioner is without adequate remedy at law, and must forever lose his just rights unless relieved by the interposition of a court of equity.

And your petitioner, as in duty bound, will ever pray.

Dated at Norwich this 30th day of August, A. D. 1870.

CHARLES JOHNSON,
By GEORGE PRATT,
His Attorney.

To the sheriff of the county of New London, his deputy, or to either constable of the town of Norwich, in said county, greeting:

25 By authority of the State of Connecticut you are hereby commanded to summon the Norwich and Worcester Railroad Company, a corporation located and doing business in said Norwich, and Jedediah Huntington and Franklin Nichols, of said Norwich, to appear before the superior court next to be held in New London, in and for the county of New London, on the second Tuesday of September, A. D. 1870, then and there to show cause, if any they have, why the prayer of the foregoing petition should not be granted.

Hereof fail not, but of this petition and citation lawful service and due return make.

Dated at Norwich this 30th day of August, A. D. 1870.

GEORGE PRATT,
Justice of the Peace.

NEW LONDON COUNTY, *ss:*

NORWICH, *Sept.* 1, 1870.

Then and there I made service of the within petition and citation by placing a true and attested copy hereof in the hands of the
26 secretary of the within-named railroad company, and Franklin Nichols, and leaving a true and attested copy hereof at the usual place of abode of the within-named Jedediah Huntington.

Attest:

J. B. FILLMORE,
Deputy Sheriff.

Fees: Travel to serve, &c., 50; 3 copies, 13 50; 4 endorsements, 62; services, 12—$14 72.

Answer.

Superior court, September term, A. D. 1870.

NEW LONDON COUNTY, *ss:*

CHARLES JOHNSON
vs.
THE NORWICH AND WORCESTER RAILROAD Comp'y.

The said Norwich and Worcester Railroad Company, reserving to itself all exceptions to the said petition, for answer thereto, or to so much thereof as it is advised is necessary or material for it to answer, says that it admits the execution and delivery of said deed, as stated
27 in said petition, and the execution and delivery of said bonds therein described, and that the said Johnson is the owner and holder of the seventeen bonds mentioned in said petition, and of the said coupons thereto attached.

And this defendant further says that, on the first day of August, 1870, when said bonds and coupons became due and payable, it had on deposit with the said Farmer's Loan and Trust Company, in the city of New York, a sum of money sufficient to pay and discharge said bonds and coupons, and which were placed there for that express purpose, and that when the said bonds and coupons were presented for payment by

the petitioner, the said Farmers' Loan and Trust Company were ready and willing, and then and there offered to pay said bonds and coupons; and that the petitioner then and there declined to accept and receive the same. And this defendant further says that said sum of money has ever since remained in the hands of said Farmers' Loan and Trust
28 Company, ready to be paid to the petitioner when he desires to receive the same, and still so remains on deposit for that purpose. And this defendant further admits that the said Jedediah Huntington and Franklin Nichols hold six hundred and eighty shares of the stock of said Norwich and New York Transportation Company as collateral security for the payment of said bonds, as stated in said petition. Wherefore the defendant says that the prayer of said petition ought not to be granted, and prays that said petition be dismissed with costs to this defendant.

The Norwich and Worcester Railroad Comp'y.

By WAIT & HALSEY,
Their Attorneys.

Finding of facts.

CHARLES JOHNSON
vs.
NORWICH AND WORCESTER RAILROAD COMpany.

In the hearing of this case the court finds the following facts, in addition to those stated in said petition and answer.

29 That, on the first day of August, 1870, Charles Johnson, the petitioner, presented the seventeen bonds and coupons described in said petition, at the office of the Farmer's Loan and Trust Company, in New York City, where said bonds were payable, and demanded payment thereof; that said respondents offered to pay said bonds in legal-tender notes of the United States, but the petitioner would not receive the said legal-tender notes in satisfaction thereof, and demanded payment of said bonds and coupons in coin, which the respondents neglected and refused to pay.

Upon the foregoing statement of facts, this court reserves the question as to what decree should be passed in said case, for the advice of the supreme court of errors, next to be holden at Norwich within and for the third judicial district, on the fourth Tuesday of October, 1870.

SANFORD, J.

Decree.

Superior court, New London County. November term, 1870.

30 Upon the petition of Charles Johnson, of Norwich, showing to this court that, on the first day of August, 1860, the Norwich and Worcester Railroad Company, a corporation under and by virtue of the laws of the State of Connecticut, and having their office and place of business in said Norwich, wishing to borrow money, under the authority of the statutes of the State, executed to the treasurer of the State a mortgage of all its property, both real and personal, situated in this State and in the State of Massachusetts, consisting of their entire railroad, from their depot in the city of Worcester, in the Commonwealth of Massachusetts, to their depot at Allyn's Point, in the town of Ledyard,

in the State of Connecticut, together with all the franchises, rights and powers thereunto appertaining and to said company belonging, with the road-bed, depots, bridges, wharves, and lands connected with the same belonging to said company, and between the termini before mentioned, and also its locomotives and rolling stock, as fully set forth in said mortgage; and further showing that said mortgage was made to
31 secure and was conditional upon the payment of certain bonds, numbering from one to two hundred and twenty-five, inclusive; one hundred and seventy-five for the sum of one thousand dollars each, and fifty bonds of the sum of five hundred dollars each, in all amounting to the sum of two hundred thousand dollars, payable according to the tenor thereof, on or before the first day of August, A. D. 1870, which said bonds were duly issued according to law; and further showing that the petitioner was the owner, on the first day of August, 1870, of sixteen of said bonds, numbered from two hundred and six to two hundred and twenty-two, inclusive, and afterwards became the owner of bond numbered two hundred and fifteen, making in all seventeen bonds of one thousand dollars each, with seventeen coupons attached, of thirty-five dollars each; and further showing that Jedediah Huntington and Franklin Nichols, of said Norwich, are the holders in trust for the better security of said bonds of six hundred and
32 eighty shares at the par value of twenty-five dollars a share, of the stock of the Norwich and New York Transportation Company, a corporation under the laws of the State of Connecticut, and having their office and place of business in said Norwich, which stock is collateral security for the payment of said bonds.

And further showing that said Norwich and Worcester Railroad Company did not pay said seventeen bonds and coupons on the first day of August, 1870, when the same fell due, but the same remain wholly due and unpaid, though due presentment of the same was made at the office of the Farmers' Loan and Trust Company, where the said bonds and the coupons thereof were made due and payable, as by said petition on file will more fully appear, praying for an order for said Huntington and Nichols to sell said stock so held by them in trust, and to apply the avails thereof to the payment of said bonds and coupons, and also that said mortgaged property be placed in the hands of the trustee
33 for the benefit of your petitioner, as is provided by statute.

This court having inquired into the truth of the allegations contained in the said petition, and having heard the parties with their counsel, doth find: That, on the first day of August, 1870, Charles Johnson, the petitioner, presented the seventeen bonds and coupons described in said petition, at the office of the Farmers' Loan and Trust Company, in New York City—where said bonds were payable—and demanded payment thereof; that said respondents offered to pay said bonds and coupons in legal-tender notes of the United States, but the petitioner would not receive the said legal-tender notes in satisfaction thereof, and demanded payment of said bonds and coupons in coin, which the respondents neglected and refused to pay, and that the allegations contained in said petition, except as they are inconsistent with these facts, are true; and thereupon this court finds that said bonds and coupons are due and unpaid, and doth therefore order and
34 decree that if the said Norwich and Worcester Railroad Company shall fail to pay to said Charles Johnson the said bonds and coupons, amounting in all to the sum of seventeen thousand five hundred and ninety-five dollars in gold and silver coin of the United States, and the interest accruing thereon, at the rate of seven per cent.

per annum, in coin, after the first day of August, 1870, and the costs of this petition, in currency, taxed and allowed to be on or before the first Monday of May, 1871, then the said Huntington and Nichols, trustees as aforesaid, are hereby directed to advertise for sale said stock in two daily newspapers published in said Norwich, for at least three weeks, at the expiration of which time said stock shall be sold at public auction, at such place as said trustees shall appoint, and the avails of said stock shall be appropriated towards paying said debt in coin, as aforesaid, first deducting the reasonable expenses of such sale.

And provided that the avails of said stock shall not be sufficient to pay said bonds aforesaid—then if said respondents shall fail to
35 pay said debt, interest, and costs, as hereinbefore provided, on or before the first Monday of May, A. D. 1871—then said railroad and all the property described in said mortgage, shall pass into the hands of the treasurer of this State, who is hereby authorized and empowered to take possession the same until the rents or profits thereof shall amount to enough to pay said debt, interest, and costs, as hereinbefore provided, or until further order of the court.

Motion in error.

Superior court, New London County. November term, 1870.

CHARLES JOHNSON
vs.
NORWICH AND WORCESTER RAILROAD COMP'Y.

The defendant, within twenty-four hours after final judgment, respectfully represents that it is aggrieved by the decisions of the court in this cause, upon the questions of law therein apparent on the record, and moves that the record in this case may be transmitted to the supreme court of errors, to be held at Norwich, within and for the third
36 judicial district, on the second Tuesday of March, 1871, for the revision of the manifest errors therein contained; and for such errors, the defendant assigns the following, to wit:

1. That judgment should have been rendered for the defendant instead of the plaintiff.

2. That said court erred and mistook the law in holding that legal-tender notes of the United States were not a legal tender in payment and discharge of said bonds and coupons, contrary to the provisions of the act of Congress, approved Feb'y 25th, 1862, and the several acts in addition thereto.

3. That said court erred and mistook the law in rendering judgment that the said bonds and coupons, and the interest accruing thereon, should be paid in coin, and in ordering the sale of said stock, and in directing said trustees to take possession of said railroad unless such payment should be so made.

Wherefore the defendant says that said judgment ought to be reversed, and it be restored to all it has lost thereby.

37 THE NORWICH AND WORCESTER RAILROAD COMPANY,
By WAIT AND HALSEY,
Its Attorneys.

This motion is allowed, and Jeremiah Halsey is recognized in the sum of one thousand dollars, conditioned that the said Norwich and Wor-

cester Railroad Company shall pay all damages if it fail to prosecute said motion to effect.

W'M L. BREWER, *Clerk.*

At a superior court, held at Norwich, within and for the county of New London, on the third Tuesday of November, A. D. 1870—
Present, Hon. Origen S. Seymour, judge.

CHARLES JOHNSON, OF NORWICH, PLAINTIFF,
vs.
THE NORWICH AND WORCESTER RAILROAD Company, a legal corporation of this State, having its office and principal place of business in Norwich, defendants.

In a petition praying for certain relief, as stated in said petition on file, dated the 31st day of August, A. D. 1870.

This petition was brought to the September term of this court,
38 A. D. 1870, when the parties appeared, and were heard. After such hearing, the court made a finding of the facts in said cause, and reserved the questions of law arising thereon for the advice of the supreme court of errors, at the term of that court held at Norwich, on the 4th Tuesday of October, 1870; and said cause was continued to this present term. And now, at this term, to which said cause by continuance comes, said decree as on file is passed by this court in accordance with the advice of the supreme court of errors.

And thereupon, within twenty-four hours after final judgment, the defendants move that the record in the cause may be transmitted to the supreme court of errors, at its term next to be held at Norwich, within and for the third judicial district, on the 2d Tuesday of March, A. D. 1871, for the correction of the errors therein; which motion is allowed.

A true copy of record.
Attest: W'M L. BREWER, *Clerk.*

39 At a session of the supreme court of errors of the State of Connecticut, held at Norwich, within and for the third judicial district of said State, on the second Tuesday of March, A. D. 1871—
Present, Hon. Thomas B. Butler, chief judge; John D. Park, Elisha Carpenter, La Fayette S. Foster, Origen S. Seymour, associate judges; William L. Brewer, clerk; Richard A. Wheeler, sheriff.

CHARLES JOHNSON, OF NORWICH, PLAINTIFF,
vs.
THE NORWICH AND WORCESTER RAILROAD Company, a legal corporation of this State, having its office and principal place of business in said Norwich, defendants.

In a petition praying for certain relief, as stated in said petition as p'r copy on file, dated the 31st day of August, A. D. 1870.

This action came to the present term of this court on a motion in error filed by the defendants in the superior court for said county and State, at its November term of said superior court, A. D. 1870.
40 And now, at this term of this court, the parties appear and are

heard; and this court having fully heard the said parties, and duly considered the same, are of the opinion that there was no error in the ruling of said superior court.

It is, therefore, considered by this court, that there is nothing erroneous in the judgment of the court below, and the same is affirmed.

Attest: W'M L. BREWER,
Clerk of said Court.

41 *Copy of bond.*

Know all men by these presents that we, George L. Perkins and John T. Wait, both of the town of Norwich, county of New London, State of Connecticut, are held and firmly bound unto Charles Johnson, of said town of Norwich, in the sum of twenty thousand dollars, to be paid to the said Johnson, his executors or administrators; to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents, sealed with our seals, and dated this 24th day of March, A. D. 1871.

Whereas lately at a term of the supreme court of errors of the State of Connecticut, held at Norwich, within and for the third judicial district of said State, on the second Tuesday of March, 1871, in a suit depending in said court between the Norwich and Worcester Railroad Company, a corporation located and doing business in said town of Norwich, and Charles Johnson aforesaid, judgment was rendered
42 against the said Norwich and Worcester Railroad Company, and the said Norwich and Worcester Railroad Company having obtained their writ of error and filed a copy thereof in the clerk's office of said court, to reverse the judgment so rendered in the aforesaid suit, and a citation directed to the said Charles Johnson, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Norwich and Worcester Railroad Company shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; otherwise to remain in full power, force, and virtue.

G. L. PERKINS. [SEAL.]
JNO. T. WAIT. [SEAL.]

Sealed and delivered in presence of—
ALBERT L. BOLLES.

43 Approved by Tho's B. Butler, chief judge of the supreme court of errors of the State of Connecticut.

NORWICH AND WORCESTER RAILROAD COMPANY
vs.
CHARLES JOHNSON.

Filed in the office of the clerk of the supreme court of errors of the State of Connecticut, for New London County, this 25th day of March, A. D. 1871.

W'M L. BREWER,
Clerk of said Court.

44 NORWICH AND WORCESTER RAILROAD Company, plaintiffs in error,
vs.
CHARLES JOHNSON, DEFENDANT IN ERROR.

STATE OF CONNECTICUT,
New London County, ss :

I, William L. Brewer, clerk of the supreme court of errors of the State of Connecticut, for the county of New London, in the third judicial district, hereby certify that the above and foregoing is a true copy of the file, pleadings, and record of judgement in the above-entitled cause.

In testimony whereof I have hereunto set my hand and the seal of said supreme court of errors, at Norwich, in said county, this 24th day of August, A. D. 1871.

Attest:
[SEAL. W'M L. BREWER, *Clerk.*

45 NORWICH & WORCESTER RAILROAD Company, plaintiffs in error,
vs.
CHARLES JOHNSON, DEFENDANT IN ERROR.

And afterwards, to wit, on the first Monday in December, in December term, in the year one thousand eight hundred and seventy-one, the said Charles Johnson, by George Pratt, his attorney, freely comes here into court and says that there is no error, either in the record and proceedings aforesaid or in giving the judgment aforesaid; and he prays that the said supreme court of judicature, before its justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matter aforesaid above assigned in error, and that the judgment aforesaid, in favor aforesaid given, may be in all things affirmed, &c.

GEO. PRATT,
Attorney for Defendant in Error.

46 (Indorsed:) Sup. Court U. S. 1870. Dec. term. No. 575. Norwich & Worcester R. R. Co. vs. Johnson, joinder in error. Filed 23 November, 1871.

(Indorsement on cover:) No. 346. The Norwich & Worcester Railroad Company, plaintiff in error, vs. Charles Johnson. Connecticut sup. c't of errors. Filed 14th October, 1871.